

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of COURTNEY L. CARABALLO,
MARK W. CARABALLO II, and BRIANNA M.
CARABALLO, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARK CARABALLO and CHARITY
CARABALLO,

Respondents-Appellants.

UNPUBLISHED

August 12, 2003

No. 247295

Lake Circuit Court

Family Division

LC No. 02-000851-NA

Before: Whitbeck, C.J., and Smolenski and Murray, JJ.

MEMORANDUM.

Respondents appeal as of right from the trial court's order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(ii), (b)(iii), (g) and (j). We affirm.

Respondents argue that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We disagree. We review the trial court's findings of fact for clear error. *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

The evidence clearly and convincingly showed that respondents' one-year-old son was malnourished and "wasted," that he had sustained several serious injuries over an extended period of time, and that respondents had not taken him to see a physician since he was seven weeks old. Indeed, there was evidence that, rather than seek medical care, respondents hid the child from relatives and child welfare professionals for many months before his hospitalization in February 2002. When he was hospitalized, he had deep cuts on his hand and foot, a bruise to his neck consistent with having been hung, "pressure" bruises over several parts of his body, and scratches that could not have been self-inflicted. He also had injuries that appeared to be old puncture wounds or burns. Additionally, he had broken bones in both legs, including a "pulling or twisting" break to his fibula, and numerous head injuries caused by "violent shaking and/or impacts." Expert testimony indicated that, contrary to respondents' claims, the child would not have behaved normally on the day he was taken to the hospital. Physicians also testified that the child's injuries could not have been self-inflicted, caused by accident, or caused by another child.

Indeed, one physician testified that it appeared that the child had been “tortured.” There was also evidence that in May/June 2001, respondent-mother expressed her fear that the child “might get hurt” because his fussing upset respondent-father.

Although there was no direct evidence of how the child was injured, the child continuously resided in respondents’ home and was under their care. In fact, it appears that the trial court gave respondents the benefit of the doubt in finding, at a minimum, that a nonparent adult caused the injuries. Considering the varying ages and severity of the numerous injuries, the evidence established that respondents had the opportunity to prevent the physical abuse and failed to do so, and that it was foreseeable that the child would be abused in the future if placed in respondents’ home. Although the evidence did not show that respondents’ two daughters were similarly abused, the mistreatment of their son was probative of how respondents may treat their two daughters. *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995); *In re Jackson*, 199 Mich App 22, 26; 501 NW2d 182 (1993). Therefore, we hold that the trial court did not clearly err in finding that statutory grounds existed for termination of respondents’ parental rights.

Further, the evidence did not show that termination of respondents’ parental rights was clearly not in the children’s best interests, MCL 712A.19b(5), or that it was inappropriate or a denial of due process to terminate respondents’ parental rights at the initial dispositional hearing. MCR 5.974(D)¹; *In re Trejo*, *supra*.

Affirmed.

/s/ William C. Whitbeck
/s/ Michael R. Smolenski
/s/ Christopher M. Murray

¹ The court rules governing child protective proceedings were amended and recodified as part of new MCR subchapter 3.900, effective May 1, 2003. This opinion refers to the rules in effect at the time of the trial court’s decision.